IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6421 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

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KANTI @ RAJU VIKRAMSINH

Versus

COMMISSIONER OF POLICE, SURAT

Appearance:

1. Special Civil Application No. 6421 of 2002

MR ARVIND K THAKUR for Petitioner No. 1

MR HH PATEL, AGP for Respondent No. 1-3

CORAM : MR.JUSTICE C.K.BUCH

Date of decision: 12/08/2002

ORAL JUDGEMENT

1. By this petition under Article 226 of the Constitution of India, the petitioner- detenu has challenged the legality and validity of the order of

detention dated 8.3.2002 passed against him by the Commissioner of Police, Surat City, in exercise of the powers conferred on him by Section 3(2) of The Gujarat Prevention of Anti-Social Activities Act, 1985 (hereinafter referred to as the PASA Act) the petitioner-detenu. The petitioner has been branded as "dangerous person" within the meaning of Section 2(c) of the PASA Act.

2. The order of detention has been passed on 8.3.2002 and has been executed on the very same day along with the grounds of detention. on perusal of the papers supplied to the detenu, it transpires that the petitioner was found involved in three criminal offences registered with Salabatpura Police Station of Surat City for the offences punishable under Sections 380, 454, 457 of IPC etc. First offence was registered on 12.1.2001 and the second offence was registered on 29.6.2001 and the last offence against the petitioner was registered on 17.11.2001. In all the three offences, valuable muddamal was ultimately recovered by the investigating agency. The subsequent statements recorded by the sponsoring authority reveal that two other criminal wrongs of similar nature were committed by the present petitioner. So, stating all these details, detaining authority has recorded subjective satisfaction and exercised powers under Section 3 of the PASA.

3. Ld. counsel Mr. Arvind Thakur for the petitioner has taken me through the memo of the petition. The petitioner has challenged the legality and validity of the order on number of grounds. However, ld. counsel has concentrated his arguments on two main points. It is firstly submitted that alleged activities of the petitioner cannot be said to be prejudicial to "public order" within the meaning of PASA. He has been wrongly branded as "dangerous person" and the Police Commissioner ought not to have exercised the powers vested under Section 3 of the PASA. It is submitted that for the sake of arguments if it is accepted that the petitioner was involved in all these three offences, even than it can be said to be activities prejudicial to the "law & order" and not the "public order". He has rightly placed reliance on the decision of this Court in the case of Ashok Jivraj @ Jivabhai Solanki v/s Police Commissioner, Surat & Others, 2000(1) GLH 393. In the cited decision, this Court has referred more than one decisions of the Apex Court and ratio propounded in the cited decision would squarely apply to the set of the facts of the present case.

4. The next point argued by Ld. counsel Mr. Thakur appearing for the petitioner detenu is that the order of detention passed by the detaining authority has been passed mechanically and, therefore, the same should be quashed and set aside. Ld. counsel Mr. Thakur has submitted in support of his say that the present case is covered by the decision of this Court in the case of Ranubhai Bhikhabhai Bharwad (Vekaria) v/s State of Gujarat & Others, 2000(3) GLR 2696 (Vol.XLI (3). Ld. Single Judge of this Court, after referring to the decision in the case of Kalidas C.Kahar v/s State of Gujarat, 1993(2) GLR 1659, has held that exercise of powers by the detaining authority was mechanical and devoid of application of mind and, therefore, detention order requires to be quashed. It is submitted that in the present case also, the papers placed before the detaining authority on 7.3.2002 has been dealt with in 24 hours and the order of detention is passed on 8.3.2002. In the cited case also, entire bunch of papers was considered within 24 hours. Statements of two unnamed witnesses were recorded on 18.02.2002, but ultimately those statements were placed before the detaining authority on 7.3.2002 and on the very next day i.e. on 8.3.2002, the order of detention has been passed. I have considered the above-cited decisions and if relevant dates are considered, I am satisfied that the present case is squarely covered by the aforesaid decisions as facts of both the cases are similar in nature. It is also submitted that in number of decisions, this Court has consistently quashed and set aside the orders of detention where there is non-application of mind or mechanical application of mind. Under the circumstances, without entering into the merits of the other grounds, impugned order of detention requires to be quashed and set aside on this sole ground. The State has even not filed formal reply to resist relevant grounds raised in the petition. It is, therefore, held that impugned order of detention is bad-in-law and suffers from the vice of undue haste and suffers from non-application of mind.

5. Ld. APP Mr. Patel appearing for the State has placed reliance on two decisions of this Court; viz; (i) Premsing @ Pallu Jesing Rajput v/s State of Gujarat & Others, 1999(1) GLH 648, and (ii) Amanullakhan Kudratallakhan Pathan v/s State of Gujarat & Others, 1999(1) GLH 1003. The cited decisions refer about magnitude as well as gravity of the offences committed. The detenu was found involved in the offences punishable under Section 392, 387 of IPC in the first cited case. In the second decision cited above, the detenu was found involved in the serious offences punishable under

Sections 307, 120B, 212 of IPC and offences punishable under TADA, Explosive Act and under Arms Act. The Court has considered the magnitude as well as gravity of the offence and on facts, the Court was satisfied that the subjective satisfaction arrived at by the authority as to apprehension of disruption of the "public order" was found correct. So, on facts, above cited two decision would not help the respondents in the present case. On the contrary, one Shri Rakesh Ghanshyambhai Acharya co-detenu of the present petitioner, has been set at liberty by this Court vide oral judgment dated 1.7.2002 while dealing with Spl.C.A. NO. 4923/2002. So, one additional ground of parity would also be available to the present petitioner and hence on the ground of parity also,this petition requires to be allowed.

6. For the reasons aforesaid, this petition is allowed. Impugned order of detention dated 8.3.2002 passed by the Commissioner of Police, Surat City, is hereby quashed and set aside and detenu is hereby ordered to be set at liberty forthwith if he is not required to be detained in any other case. Rule is made absolute. Direct Service is permitted.

12-08-2002 [C. K.BUCH, J]
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